IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

C.W.P. No. 2703 of 2007
Date of Decision: 22.5.2007

Ranbir Singh.

..... Petitioner through
Shri Amar Vivek, Advocate.

Versus

Food Corporation of India and others.

..... Respondent Nos. 1 to 3
through Shri Ashwani
Prashar, Advocate.
Respondent No.4 through
Shri Munish Jolly,
Advocate.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari quashing the award of tender for appointment of Road Transport Contractor vide Annexure P7 dated 17.2.2007 in favour of respondent no.4. A writ of mandamus has also been sought directing respondent nos. 1 to 3 to award the contract to the lowest bidder or in the alternative, to hold fresh tender process in a transparent manner.

The petitioner has averred that he had applied in response to the tender floated by respondent nos. 1 to 3 for appointment of Road Transport Contractor. Respondent no.4 was also an aspirant for the same. When the technical bids were opened, only he and respondent no.4 remained in the fray. The petitioner had quoted rates 180% above the Schedule of Rates (ASOR), whereas respondent no.4 had bid with rate of 175 to 180% ASOR. Respondent nos. 1 to 3, thereafter, resorted to negotiations and the petitioner brought down his bid to 68% ASOR, while respondent no.4 brought down his bid to 72% ASOR.

The grievance of the petitioner is that despite the fact that he had offered lesser rate, the contract was awarded to respondent no.5.

Upon notice of the writ petition having been issued, the respondents entered appearance. It has been stated that in fact, the petitioner had also bid for a contract which was originally awarded to Shri Jagdish Singh Walia, who expired during the currency thereof. The petitioner had quoted 195% ASOR, which was brought to 185% ASOR on negotiations, whereas deceased- Jagdish Singh Walia had been carrying on the contract at 7% ASOR. Since the rates were very high, the tender enquiry dated 29.9.2006 was scrapped. Thereafter, quotations were again invited from the interested parties vide tender enquiry dated 3.11.2006 for award of ad hoc transport contract. Five quotations were collected and out of them, the petitioner's quotation was the lowest one. He had quoted 197% ASOR which was again very high. The petitioner was called for negotiations and he toned down his rates to 68% ASOR on 5.2.2007 for ad hoc transport

contract. At the same time, a tender enquiry was issued on 20.11.2006 for appointment of a Regular Transport Contractor for Batala-II and III for a period of two years. In this enquiry, respondent no.4 was the lowest tenderer. In fact, there were two valid tender offers and the lowest tenderer, i.e. respondent no.4 was called for negotiations, who reduced his rates up to74% ASOR. It has been averred by respondent nos. 1 to 3 that although the rate of 68% ASOR quoted by the petitioner for ad hoc enquiry seemed to be the lowest, yet, in the long run, the rate of 74% ASOR quoted by respondent no.4 were in the interest of the Corporation.

Learned counsel for the petitioner contended that the tender of the petitioner being 68% ASOR was lower than what was offered by respondent no.4 at 74% ASOR and the same should have been accepted by respondent nos. 1 to 3.

On the other hand, learned counsel for the respondents mainly relied on the averments made in the written statement of respondent nos. 1 to 3 to say that there was a distinction between the ad hoc contract and regular contract and the rate of 74% ASOR was preferred because it was beneficial to the Corporation in the long run.

We have thoughtfully considered the rival contentions and have perused the whole record.

What has amazed us is the extreme oscillation between the rates quoted by both the petitioner and respondent no.4 and the drastic level of toning down of the rates after negotiations. What is not to be missed is that the original contractor, namely, Jagdish Singh Walia, who expired during

the currency of his contract, was working at 7% ASOR, whereas according to the showing of the parties, the petitioner and respondent no.4 had quoted astronomically high figures which were scaled down to 68% and 74% ASOR, respectively. No plausible explanation has been given by respondent nos. 1 to 3 as to how they had accepted these offers, especially when the earlier contractor was working merely at 7% ASOR. Apparently the process lacks transparency and leads us to draw an irresistible inference that it was not free from blemish.

In this view of the matter, we quash Annexure P7 dated 17.2.2007 and set aside the decision of respondent nos. 1 to 3 to award the contract for appointment of Road Transport Contractor in favour of respondent no.4 with a direction to the former to initiate the process of awarding contract afresh.

The writ petition is disposed of in the manner indicated above.

(Vijender Jain)
Chief Justice

May 22,2007
"SCM"

(Mahesh Grover)
Judge